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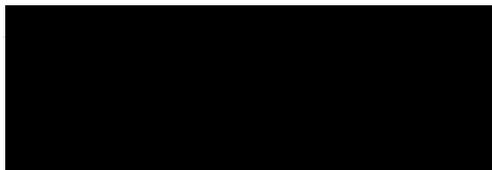
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

C1



FILE: LIN 03 165 51318 Office: NEBRASKA SERVICE CENTER Date: MAY 24 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a regional office of the Salvation Army, an international religious and charitable organization. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a Hispanic ministries coordinator. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The sole issue in contention concerns the nature of the beneficiary's work for the petitioner. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Major Loren Carter, the petitioner's divisional secretary for business, describes the position and the beneficiary's qualifications:

[The petitioner] has selected [the beneficiary] to lead the congregation at the Westport Temple Corps as its Religious Coordinator. As the Coordinator, [the beneficiary] will have the normal, traditional duties associated with a Corps Officer. These include building and developing a strong Hispanic Ministries program in the Corps area. He will minister to the "whosoever" through the spiritual, educational, and social ministries established, adopted or created by [the

petitioner] for the sake of Jesus Christ. He will develop youth programs, adult programs and character building programs in the Corps/Community Center for the Hispanic population. [The beneficiary] will represent [the petitioner] at community meetings and will develop stewardship and funding for the Corps' Hispanic programs. . . .

[The beneficiary] was commissioned as [an] ordained minister for The Salvation Army in Mexico in June 1991. He then worked in Costa Rica at the Divisional Headquarters as Assistant Director, and as officer in charge in San Salvador, El Salvador in 1993. [The beneficiary] returned to Costa Rica as Pastor in 1994. He then worked as the Hispanic Outpost Officer for The Salvation Army in Fort Collins, Colorado and then in Ogden, Utah. Most recently, he has been the Hispanic Coordinator for the Westport Corps since 1999.

[The beneficiary] is more than qualified for the position being offered to him. He has been a longtime member of The Salvation Army, was ordained fully authorized to conduct religious services.

The record contains copies of the beneficiary's commission (effectively, ordination) documents, corroborating Major Carter's statements.

The director issued a request for evidence, calling for clarification on such issues as whether or not the beneficiary is or will be acting in the capacity of an ordained minister. In response, counsel asserts: "When an Officer is commissioned, he is automatically considered an Ordained Salvationist and is recognized as a Minister of Religion. . . . [The beneficiary's] officer's commission has expired, but he is eligible for commission if he applies."

Major Carter states that the beneficiary's "duties are the same as a Corps Officer, but because he is no longer an Officer of the Salvation Army but an employee, a title other than Corps Officer is used." Major Carter confirms that the beneficiary "may re-apply for and be granted the Officer title at any time," but he offers no indication that the beneficiary intends to do so.

The petitioner submits a job description for a "Corps Program Assistant, with additional responsibilities for starting a Hispanic ministry." The responsibilities of the position include leading and speaking at Holiness meetings, overseeing weekly youth programs, assist with teaching and preparing new "soldiers" in the petitioning organization, and so on. A more specific job description for "Westport Hispanic Ministries Coordinator" charges the beneficiary with "Development of Hispanic Ministries at the Westport Corps/Community Center" and "Pastoral ministry of the Hispanic population of the area including a weekly spiritual service."

The director denied the petition, stating that the petitioner has not shown that the beneficiary's position requires "any specific religious training or theological education."

On appeal, counsel asserts that "this training/education requirement" is not found in the statute or regulations, and therefore cannot be upheld. Upon consideration, we find that the director erred by focusing solely on the "training" issue, to the total exclusion of other factors such as consideration of the beneficiary's specific duties, described at length in the record.

The record shows that the position is not broadly open to Salvation Army members, but rather has specific eligibility requirements. The fact that these requirements are not in the form of "training" does not exclude them from consideration. In this instance, the petitioner has shown that the beneficiary is responsible for organizing a

ministry, participating in the training of new workers, and so on. The beneficiary does not merely fulfill an administrative function, handling day-to-day details or acting as an office clerk while others perform the work that relates to religious activity. Rather, the petitioner's work appears to relate closely to the establishment of religious facilities and the propagation of religious doctrine. Upon review of the record, we see nothing to dissuade us from the conclusion that the beneficiary's position constitutes a religious occupation.

The burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.